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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,282	02/12/2004	Carlos V. Perry JR.	06080003C1	3518
7055 7590 02/26/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER CINTINS, IVARS C	
			ART UNIT	PAPER NUMBER
			1724	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		02/26/2007	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/26/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

# Office Action Summary

Application No.

10/776,282

Applicant(s)

PERRY, CARLOS V.

Examiner

Ivars C. Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 24-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24-26 and 30 are again rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer et al. (U.S. Patent No. 5,417,147; hereinafter "Zimmer"). As pointed out in the previous Office action, the reference discloses a tank having a bottom and sides, an inlet and outlet, and an effluent distribution system comprising channels **36b** integrally formed in the bottom of the tank, and channels **36a** extending along the side walls of the tank (see col. 2, lines 53-59), wherein the bottom channel **36b** is open to the inside of the tank, spans opposing ends of the tank, and has an additional intersecting channel (see Fig. 2); and this is all that is required by claims 24 and 30. This reference also shows an inlet pipe **46** extending from an interior to the exterior of the tank (see Fig. 1), and further teaches that the tank can be made from a synthetic material (col. 2, line 43); and this is all that is additionally required by claims 25 and 26. Applicant should note that the tank of Zimmer is inherently capable of being employed in a septic system, and this capability is all that is required by apparatus claims 24-26 and 30.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26, 29 and 30 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Berg et al. (U.S. Patent No. 6,280,614; hereinafter "Berg"). As pointed out in the previous Office action, should it be held that channels 36a of the Zimmer device are not located "in" the sides of the tank, then this primary reference discloses the claimed invention with the exception of these side channels. Berg shows a liquid holding tank having channels located in both its bottom and sides; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide additional channels in the sides of the tank of Zimmer, as taught by Berg, in order to assist in the drainage of liquid to the bottom of this tank.

Claims 27 and 28 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer in view of Townsend (U.S. Patent No. 3,738,527). As pointed out in the previous Office action, the primary reference discloses the claimed invention with the exception of the recited sheet. Townsend teaches lining a liquid storage tank with a protective sheet. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the liquid storage tank of Zimmer with a similar sheet-like liner, in order to protect the inner surface of this primary reference tank. Upon such modification, it would be necessary to provide perforations for the sheet at the bottom of the tank, as required by claim 28, in order to permit drainage of liquid into the troughs located at the bottom of this tank; and therefore, one skilled in the art would have been motivated to make this additional modification.

Claims 27 and 28 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmer and Berg as applied above, further in view of Townsend. As

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pointed out in the previous Office action, the modified primary reference discloses the claimed invention with the exception of the recited sheet. Townsend teaches lining a liquid storage tank with a protective sheet; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the liquid storage tank of the modified primary reference with a similar sheet-like liner, in order to protect the inner surface of this modified primary reference tank. Upon such modification, it would be necessary to provide perforations for the sheet at the bottom of the tank, as required by claim 28, in order to permit drainage of liquid into the troughs located at the bottom of this tank; and therefore, one skilled in the art would have been motivated to make this additional modification.

Applicant's arguments filed December 7, 2006 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that Zimmer shows a tank for water carbonation, and not an effluent recirculating filter tank in a septic system. Applicant further notes that wastewater is not water that is carbonized for use in soft drinks. While all of these observations are correct, they are not relevant in determining patentability of the apparatus claims in this application. It is well settled that the manner in which a claimed apparatus is intended to be employed (i.e. for effluent in a septic system) does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The tank of Zimmer contains all of the recited structural elements, and is therefore inherently capable of recirculating effluent in a septic tank system; and this capability is all that is required by apparatus claims 24-30.

Applicant also argues that there is no motivation for combining the teachings of Zimmer and Berg. Again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out that one of ordinary skill in the liquid handling art, upon viewing the teachings of both Zimmer and Berg, would have been motivated to provide additional channels in the sides of the tank of Zimmer, as proposed above, in order to assist in the drainage of liquid to the bottom of the tank in this thus modified primary reference. Such modification is deemed to be especially obvious since Zimmer clearly discloses the importance of proper drainage of liquid to the bottom of the tank (see col. 2, lines 57-59).

Applicant also questions the combination of Zimmer and Townsend, arguing that Townsend does not teach a tank having troughs, much less, intersecting troughs. Once again, this argument has been noted and carefully considered, but is not deemed to be persuasive of patentability. It is pointed out that Townsend is relied upon only for the teaching of lining a liquid storage tank with a protective sheet, not for a teaching of intersecting channels; the concept of a tank with intersecting channels is clearly provided by Zimmer. Since the liner of Townsend would clearly be useful in the carbonation tank of Zimmer, i.e. to protect the inner surface of this primary reference tank from corrosion from the carbonated liquid contained therein, it would have been obvious to one of ordinary skill in the liquid handling art to modify the tank of Zimmer in the manner suggested by Townsend, as proposed above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is 571-272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at 571-272-1166.

The centralized facsimile number for the USPTO is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
February 18, 2007